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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

OCT 21 1996

In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION OF
INMATE CALLING SERVICES PROVIDERS COALITION

October 21, 1996

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for Inmate Calling Services
Providers Coalition

0411

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SUMMARY

The Inmate Calling Services Providers Coalition ("Coalition") respectfully petitions for partial reconsideration and clarification of the Commission's September 20, 1996 Report and Order, FCC 96-388 in this proceeding (the "Order").

In the Order, the Commission failed to adequately focus on inmate calling services and distinguish them from general payphones. As a result, the Commission did not meet its Section 276 obligations with respect to inmate calling services, either with regard to ensuring fair compensation for all inmate calls or with regard to adopting the nonstructural safeguards necessary to end the BOCs' discrimination against independent inmate service providers ("ISPs").

Section 276(a)(1) directs the Commission to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(a)(1). Specifically, the Commission has said it must address the issue of compensation where a "government-mandated rate . . . may not be high enough to be 'fairly' compensatory."

This is the case with inmate calls, where state ceilings on inmate local and intralata calls are typically "based on incumbent local exchange carriers' ("LECs") standard 0+ collect calling service rates." Those rates thus fail to take into account the considerable costs unique to the inmate environment and thus prevent ISPs from receiving fair compensation.

In its comments, the Coalition demonstrated that the Commission could ensure that ISPs are fairly compensated for their unique costs by establishing a \$.90 per call compensation element for inmate calls. The Commission concluded, however, that it should not prescribe per-call compensation because it was concerned about double recovery of costs already included in inmate call transmission rates and operator service surcharges.

The Coalition is on record in this proceeding as having proposed a compensation element applicable across-the-board to all inmate calls. The Coalition continues to believe that this approach is the best way for the Commission to address fair compensation for inmate calls because it satisfies the Commission's obligation under Section 276 without involving the Commission in setting or reviewing rates.

There is an immediate need at this time and Commission action is compelled by Section 276 with regard to local and intralata calls, where state rate ceilings cap inmate calls below cost without any recognition of the need for compensation. The Commission must similarly address interstate calls.

Section 276 also requires that the Commission put into place nonstructural safeguards to end the BOCs' historical discrimination against independent ISPs in favor of the BOCs' own inmate divisions. The Commission must therefore clarify that the nonstructural safeguards it made applicable to the BOCs' payphone operations apply equally to the BOCs' inmate divisions. In applying those safeguards, the Commission

must be guided by the clear command of Section 276, which requires the Commission to end all BOC discrimination. Any service or functionality that the BOC makes available to its own inmate division it must also make available to independent ISPs under the same terms and conditions, including central office functionality. The same requirements apply to independent LECs under the Act's nondiscrimination standard and the Commission's implementation of that standard.

In addition to clarifying that all of the nonstructural safeguards applicable to BOC payphones also apply to BOC inmate operations, the Commission must also recognize that inmate calling is a unique service and that the Commission can and should put into place additional safeguards to end the BOCs' anticompetitive discrimination against independent ISPs. In its comments, the Coalition specifically asked the Commission to address three critical areas that require the Commission's immediate attention: (1) BOC provision of account and fraud control information to independent ISPs; (2) the nondiscriminatory handling of billing and collection by the BOCs, including BOC treatment of bad debt; and (3) the terms under which both BOC inmate divisions and independent ISPs will purchase basic service offerings from the BOCs' regulated divisions. The Commission must address each of those issues in order to fulfill its obligations under Section 276.

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In the Matter of)

Implementation of the)
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CC Docket No. 96-128

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION OF
INMATE CALLING SERVICES PROVIDERS COALITION**

The Inmate Calling Services Providers Coalition ("Coalition") respectfully petitions for partial reconsideration and clarification of the Commission's September 20, 1996 Report and Order, FCC 96-388, in the above-captioned proceeding (the "Order"). The Coalition previously filed comments in this proceeding on July 1, 1996 ("Coalition Comments") and reply comments on July 15, 1996 ("Coalition Reply").

Many of the Coalition's members are also members of the American Public Communications Council, Inc. ("APCC"), which is the national trade association of the independent payphone industry. The Coalition joins in APCC's separate Petition for Partial Reconsideration and Clarification of the Order to the extent that it is consistent with the positions taken herein.

I. INTRODUCTION

Section 276 of the Communications Act of 1934, as amended, 47 U.S.C. § 276, defines "payphone service" as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." By including "inmate telephone service" in the definition separately from the provision of pay telephones, Congress made clear that the two are distinct services requiring distinct treatment. Moreover, the definition contrasts the provision of general pay telephones with the provision of inmate telephone services. The focus on "services" in the instance of inmate calling underscores that inmate service providers ("ISPs"), unlike payphone providers, provide an integrated package of services, in addition to providing the equipment and a gateway to the public network, including operator services, advanced call controls and monitoring, special fraud controls, etc. In short, inmate calling service is a distinct, specialized service requiring special recognition.

In the Order, however, the Commission failed to adequately focus on inmate calling services and distinguish them from general payphones. As a result, the Commission did not meet its Section 276 obligations with respect to inmate calling services.

II. THE COMMISSION MUST ENSURE FAIR COMPENSATION FOR INMATE CALLS

Section 276(a)(1) directs the Commission to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(a)(1). The Commission has determined that "fair

compensation" means the level of compensation set by the market.¹ The Commission also made clear, however, that this is true only where the market is functioning properly: "where the market does not or cannot function properly . . . the Commission needs to take affirmative steps to ensure fair compensation" Order ¶ 49. Specifically, the Commission has said it must address the issue of compensation where a "government-mandated rate . . . may not be high enough to be 'fairly' compensatory."²

This is the case with inmate calling rates, where state rate ceilings prevent ISPs from receiving fair compensation that reflects the unique costs of providing inmate service. As the Coalition explained at length in its comments in this proceeding, it is far more expensive to provide the integrated package of services and equipment necessary for inmate calling than it is to provide general payphones.³ As discussed below, on at least three separate occasions, the Commission has allowed tariffs quantifying those unique costs of providing inmate service at \$.90 per call to take effect without challenge. Yet, as the

¹ Order ¶ 49 ("[O]nce competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones.").

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), ¶ 18 n.54.

³ See Coalition Comments at 6-13. Three factors contribute to the unique costs of providing inmate calling services. First, the specialized inmate calling systems developed by ISPs to meet the call control and monitoring needs of confinement facilities require significant capital investment. *Id.* at 7-11. Second, the level of bad debt associated with calls from confinement facilities is several times higher than from public payphones. *Id.* at 12. Third, labor expenses are high because ISPs must maintain a customer service staff equipped to address the needs of inmates, the inmates' called parties, and the confinement facilities. *Id.* at 12-13.

Coalition pointed out in its comments, state ceilings on inmate local and intralata⁴ calls are typically "based on incumbent local exchange carriers' ("LECs") standard 0+ collect calling service rates."⁵ Those rates thus fail to take into account the considerable costs unique to the inmate environment and thus prevent ISPs from receiving fair compensation.

Having been presented with record evidence of this market failure, however, the Commission took no action to ensure fair compensation for intrastate local and intralata inmate calls. The Commission thus failed to meet its statutory obligation under Section 276 to provide fair compensation for each and every completed call from an inmate calling system.

Moreover, the Commission is currently considering instituting interstate rate benchmarks for inmate calls in its companion Billed Party Preference ("BPP") proceeding.⁶ If the Commission does in fact adopt such a rate benchmark, then fair compensation is also an issue with respect to interstate inmate calls. Yet, as with local and intralata calls, the Commission took no action to ensure fair compensation for the inmate services element of interstate inmate calls, despite its statutory obligation to do so.

In its comments, the Coalition demonstrated that the Commission could ensure that ISPs are fairly compensated for their unique costs by establishing a \$.90 per call

⁴ As used throughout this Petition, "intralata" means intralata calls exclusive of "local" calls.

⁵ Coalition Comments at 5.

⁶ See Billed Party Preference for InterLATA 0+ Calls, Second Further Notice of Proposed Rulemaking, CC Docket 92-77, released June 6, 1996.

compensation element for inmate calls.⁷ The Commission has, on at least three prior occasions, allowed to take effect without challenge this very same \$.90 compensation element by accepting the tariffs filed by each of the "Big Three" IXC's (AT&T, MCI, and Sprint) for their inmate calling service. In each case, the package of services offered under the tariff was the same as the package offered by the typical ISP, and in each case, the tariff contained an operator service surcharge for inmate calls \$.90 higher than the carrier's operator surcharge for non-inmate calls, reflecting the higher costs associated with inmate calling.

The Commission did not question the validity of the \$.90 figure but concluded that it should not prescribe per-call compensation because it was concerned that "mandating a per-call amount for inmate payphones . . . could possibly lead to a double recovery" of costs already included in inmate call transmission rates and operator service surcharges.⁸ The Commission, however, was wrong. As discussed below, double recovery is not a valid concern with regard to either intrastate or interstate calls.

Moreover, the Commission's failure to address fair compensation for inmate calls is inconsistent with its treatment of local coin calling rates. Local coin rates, like inmate calling rates, have traditionally been subject to rate ceilings in most of the states.⁹

Recognizing that those ceilings prevented the marketplace from functioning to provide

⁷ Coalition Comments at 13-16.

⁸ Order ¶ 74.

⁹ In fact, many of the inmate rate ceilings are based on the local coin calling rate ceiling.

payphone providers with fair compensation for local coin calls, the Commission ordered that local coin calling rates be deregulated. However, when confronted with the same market-distorting rate ceilings for inmate calls, the Commission did not address their effects on fair compensation. If the Commission is to fulfill Section 276's mandate to provide fair compensation for each and every completed call, then it must reconsider its failure to address fair compensation for inmate calls.

The issue of fair compensation for inmate collect calls is especially critical because collect calls are the only kind of calls that can be made from inmate calling systems.¹⁰ Inmate calling systems do not take coins, and all other forms of coinless calls are blocked. If the Commission does not address inmate collect calls, it cannot meet its obligation to ensure fair compensation.¹¹

A. The Commission Must Prescribe the \$.90 Compensation Element for Local and Intralata Inmate Calls in Light of State Rate Ceilings Which Prevent the Market from Functioning to Provide Fair Compensation

Section 276 requires that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed interstate and intrastate call." 47 U.S.C. § 276(b)(1)(A) (emphasis added).

¹⁰ In a very limited number of instances, calls debited to an inmate commissary account are also allowed.

¹¹ The Coalition is on record in this proceeding as having proposed a compensation element applicable across-the-board to all inmate calls. The Coalition continues to believe that this approach is the best way for the Commission to address fair compensation for inmate calls because it satisfies the Commission's obligation under Section 276 without involving the Commission in setting or reviewing rates.

Thus, the statute is clear that Congress intended for the Commission to affirmatively address compensation for intrastate calls where necessary to ensure fair compensation.

The Order, however, fails to meet this obligation with respect to inmate local and intralata calls. As the Coalition demonstrated in its comments, most states have imposed ceilings on inmate local and intralata calling rates.¹² Attached hereto as Exhibit 1 is a table that shows that at least 30 states have placed some form of ceiling on local and intralata inmate calling rates.

The mere existence of those state ceilings does not in and of itself justify Commission intervention in the market. Were those ceilings set high enough to permit recovery of the inmate services compensation element, they arguably would provide "fair compensation."

That, however, is not the case. In nearly every instance, the local and intralata rate ceilings are based on the incumbent LEC's (or, in a few cases, AT&T's) regular non-inmate collect call rates.¹³ See Exhibit 1. In other words, in those states, ISPs are forced to charge the same rates for calls from their inmate calling systems as the LEC charges for a regular collect call from any residential or business phone. The ISP rates include no element whatsoever to recover fair compensation for the unique costs of providing inmate service over and above the costs of providing regular collect service.

¹² Coalition Comments at 5.

¹³ Moreover, even in states that do not have a formal rate ceiling in place on local and intralata calls, political pressures dictate that ISPs nevertheless must often charge the incumbent LEC's regular non-inmate rates.

Cost data from the independent ISPs operating the majority of the county jails in North Carolina makes abundantly clear the effects of these artificially low local and intralata inmate rate ceilings. That data, attached as Exhibit 2 hereto, shows that, as a result of the rate ceilings in place in North Carolina, the ISP are losing \$.46 on every local call and \$1.10 on every intralata call. As shown by the chart attached hereto as Exhibit 3, local calls represent 73% of the calling traffic and intralata calls 12%. Thus, the North Carolina ISPs are losing money on 85% of their calls. North Carolina's relative volume of local and intralata calls is typical of calling patterns from local and county jails.

In light of this market failure, the Commission should take affirmative action to ensure that ISPs receipt fair compensation. The Commission should thus prescribe a \$.90 inmate system compensation element for all local and intralata inmate calls.¹⁴ As discussed above, the Commission has already allowed the \$.90 element to go into effect in conjunction with each of the Big Three's inmate calling services and thus has implicitly recognized it as providing fair compensation and recovery of the costs of providing such services.

¹⁴ Another option would be for the Commission to simply deregulate all inmate calling rates. Doing so, however, would require more sweeping federal intervention in state rate-setting than would simply prescribing a \$.90 compensation element to be added to existing state rates. Moreover, the Commission has said in the context of the local coin rate, that it will "make an exception to the market-based approach for states that are able to demonstrate to the Commission that there are market failures within the state that would not allow market-based rates." Order ¶ 61. Confinement facilities may be an example of locational monopoly market failures. Deregulation would thus likely involve the Commission in reviewing any number of state petitions to retain rate-setting authority for inmate calls from confinement facilities.

Adopting the \$.90 compensation element would also help end the current cross-subsidization of intrastate rates by interstate rates. Because rate ceilings have kept local and intralata rates artificially low and, in many cases, below cost, ISPs have been forced to look to interstate rates to make up the difference. This in turn has forced some ISPs to set their interstate rates higher than they otherwise would have. Not only does this result in market distortions, it also is inconsistent with the Commission's stated intent in the Billed Party Preference proceeding to ensure that interstate inmate calling rates are kept at reasonable levels.

As mentioned above, in rejecting the \$.90 per-call compensation element, the Commission expressed the concern that the \$.90 element could possibly lead to a "double recovery" of costs already included in inmate transmission rates and operator service surcharges.¹⁵ This assumes, however, that inmate rates are generally higher than non-inmate rates. In fact, in all but a handful of the 30 states where local and intralata inmate rate ceilings are in place, the ceiling is set at, or less than, the LEC's regular collect call rate. It is simply not the case that ISPs are free to charge "higher-than-average operator service rates and special charges on end-user phone bills."¹⁶

That a \$.90 compensation element would not lead to double or excessive recovery is also made clear by the tables attached hereto as Exhibit 4. Those tables show on a state-by-state basis the operator service surcharges charged by the RBOC for local and

¹⁵

Order ¶ 74.

¹⁶

Id.

intralata inmate calls. In most cases, the rates depicted are typical of the rates charged by independent ISPs in the jurisdiction. In only two states -- Illinois and Michigan -- would adding the \$.90 to the existing local or intralata standard collect surcharge bring the surcharge above the \$3.00 that the Commission has allowed to take effect without challenge for each of the Big Three IXC's in the inmate environment.

To the extent that those -- or any other -- states may feel that the \$.90 charge results in a total charge for a call that is too high, they would be free to conduct rate proceedings in accordance with the usual rate-setting standards to examine whether the intrastate portion of the operator service surcharge, or the transmission rate, should be reduced accordingly. In fact, one of the chief advantages of adding the \$.90 element to existing state rates is that it would preserve independent state judgments as to the appropriate rate for inmate calls, while at the same time ensuring fair compensation for ISPs, as mandated by Section 276. The Commission would not need to become involved in examining or setting individual state rates. The Commission would not have to second-guess the states as to appropriate rates in their jurisdictions or review state proceedings.

For these same reasons, the Commission should not simply order the individual states to reconsider their rates. Section 276 requires the Commission to ensure fair compensation for all calls. Sending the matter back to the states is not taking action. In all likelihood, the Commission would be called upon to review the state proceedings. Rather than referee multiple state proceedings, the Commission should act directly. In any case, as

demonstrated above, the need for relief is pressing and immediate. Many ISPs are losing money on every local and intralata call made from their equipment, and cannot afford the delay of months, or perhaps years, that would result from referring the matter to the states.

B. The Commission Must Also Take Action to Address Fair Compensation for Interstate Inmate Calls

As mentioned above, the Commission has proposed, in its companion Billed Party Preference proceeding, to set a rate benchmark for interstate inmate calls. The Commission has expressed concern over the excessive rates charged by a small minority of ISPs. The Coalition shares that concern. In an *ex parte* letter dated September 9, 1996, the Coalition laid out two possible approaches to addressing the problem of overcharging while at the same time ensuring fair compensation for interstate calls, as required by Section 276.¹⁷

One possibility is for the Commission to set the benchmark rate in the BPP proceeding at the average of the rates charged by the Big Three for inmate calls, plus 15%. This would ensure that the rates charged by ISPs are reasonable, while providing the \$.90 compensation element for inmate calls included in the Big Three's rates. Thus, the Commission would not need to address the issue of fair compensation for interstate inmate calls in the instant proceeding. The other option is for the Commission to prescribe the \$.90 compensation element for all interstate, as well as local and intralata, inmate calls.

¹⁷ See letter from Albert H. Kramer to William F. Caton, Acting Secretary, dated September 9, 1996. A copy of the Letter is attached hereto as Exhibit 5.

The Commission would then be free to set the benchmark in the BPP proceeding at the Big Three's non-inmate rates, plus 15%.

The two approaches would produce essentially identical rates. Under either proposal, the rate would be 115% of the Big Three's MTS rates¹⁸ plus roughly \$3.30-\$3.45 (either 115% of the \$3.00 inmate surcharge or 115% of the regular non-inmate collect surcharge of \$2.10 plus \$.90).

Setting the compensation element in this proceeding is, however, preferable because it would allow the Commission to ensure that ISPs are fairly compensated, without having to capture that compensation in long distance rates. By providing for the direct recovery of fair compensation for the costs associated with the specialized equipment and services required to provide inmate calling services, the Commission could break the link between fair compensation and interstate long distance transmission rates. Breaking the compensation element out as an explicit charge allows costs to be properly allocated to cost causers and promotes market efficiencies by allowing carriers and ISPs to better compete on the basis of price. Moreover, it makes clear to the inmate caller's friends and family exactly what it is they are paying for.

As for the Commission's concern regarding double recovery, the Coalition has made explicit that it has never sought double recovery of the inmate services compensation element. As detailed above, the Coalition proposed that the Commission should provide

¹⁸ The rate is the same for inmate and non-inmate collect calls.

the \$.90 either as an explicit inmate services compensation element or by basing the interstate rate benchmark on the Big Three's inmate rates, which already include the inmate services compensation element.

C. The Inmate Services Compensation Element for Intrastate Interlata Calls Can Be Addressed Separately

As the tables attached as Exhibit 4 show, a majority of states have already recognized the need to provide adequate cost recovery for interlata inmate calls. In those states, the existing state interlata rates reflect the \$3.00 AT&T Prison Collect surcharge, which contains the \$.90 compensation element advocated by the Coalition.

The Coalition believes that the Commission must still prescribe fair compensation in the remaining states that have not recognized an element for inmate services compensation. Because the Commission has, however, expressed concern over double recovery, prescribing an across-the-board \$.90 element for intrastate interlata calls could possibly raise concerns regarding double recovery in the majority of states where rates are already fairly compensatory.¹⁹

While these states could conduct proceedings in accordance with usual ratemaking principles to adjust the intrastate rates in light of the Commission's decision, there may be elements of inequity associated with burdening these states with proceedings

¹⁹ Unfortunately, some of the Coalition's members conduct substantial amounts of business in those states that have not recognized the interlata intrastate inmate services compensation element. The Commission may thus want to adopt the "across-the-board" solution.

when it is only a minority of states that have not addressed the inmate calling services compensation element. Further, the Commission can focus its attention in this proceeding primarily on local and intralata calls, where the need for fair compensation is most acute and Section 276 requires immediate Commission action, by allowing the Coalition, or individual ISPs, to bring the remaining states with non-fairly compensatory rates to the Commission's attention in separate proceedings.²⁰ In light of these considerations, the Commission may wish to defer action on intralata interstate compensation at this time.

III. THE COMMISSION MUST PUT INTO PLACE THE NONSTRUCTURAL SAFEGUARDS THAT THE COALITION HAS DEMONSTRATED ARE NECESSARY TO END BOC DISCRIMINATION AGAINST INDEPENDENT ISPS

In addition to requiring that the Commission ensure fair compensation for all calls, Section 276 requires the Commission to establish nonstructural safeguards to end the BOCs' historical discrimination against independent ISPs in favor of their own inmate services operations. The language of the Order, however, failed to focus explicitly on inmate services in the nonstructural safeguards portion of the Order. It is possible that the Commission felt that it had dispensed with this obligation in its February 20, 1996 Declaratory Ruling, 11 FCC Rcd 7362 (1996) regarding the regulatory status of BOC inmate calling systems. That ruling, however, simply clarified that inmate calling systems

²⁰ Another option would be for the Commission to only prescribe the \$.90 element in the remaining states. This would, however, involve the Commission in examining individual state rates.

are CPE under the Commission's existing CPE rules. It did not fulfill the Commission's obligation to comply with its statutory duty under Section 276.

**A. The Commission Must Clarify That All of the
Nonstructural Safeguards Applied to Payphones
Apply As Well to Inmate Calling Systems**

In Sections III (B) and (C) of the Order, the Commission ruled that the Computer III safeguards, including CEI and ONA, are applicable to BOC payphone operations. The Commission did not make clear, however, that those same safeguards also apply to the BOCs' inmate service operations. The Coalition requests that the Commission clarify that all of the nonstructural safeguards made applicable in the Order to BOC payphone services apply equally to BOC inmate calling services.

In ensuring that all the nonstructural safeguards applied to BOC payphone divisions apply equally to the BOCs' inmate divisions, the Commission must be guided by the express language of Section 276. Section 276 states unequivocally that BOCs "shall not prefer or discriminate in favor of" their own inmate service divisions. 47 U.S.C. § 276(a)(2). This language means what it says, i.e. that Section 276 prohibits all discrimination by the BOC between its own inmate services division and independent ISPs, and requires that all operating functions provided by the BOC to its own inmate operations be made available to independent ISPs on the same terms and conditions.²¹

²¹ This is the same reading given by the Commission to the non-discrimination provision of Section 251 of the Act. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket (Footnote continued)

In the Order, the Commission ruled that LECs must provide unbundled coin lines with full coin line functionality to independent payphone providers. Order, ¶ 146.²² The Commission must clarify that, in the context of inmate calling services, this means that the LECs must unbundle any central office functionality used to provide inmate services and provide that functionality to independent ISPs on a tariffed basis.²³

Moreover, the Commission must clarify that if a LEC provides central office functionality to its own inmate operations with the inmate operation's rates programmed in, the functionality provided to independent ISPs must similarly rate calls at the rates selected by the independent ISP. Providing functionality that can only be used by independent ISPs that charge the retail rates selected by the LEC discriminates against ISPs that have chosen to charge different rates, and does not meet either the stringent

(Footnote continued)

96-98, released August 8, 1996, ¶¶ 218-19. There, the Commission compared the nondiscrimination provision of Section 251, which states that interconnection shall be on terms that are "just, reasonable, and nondiscriminatory," 47 U.S.C. § 251(c)(2)(D), with the longstanding prohibition of Section 202 against "unjust or unreasonable discrimination," 47 U.S.C. § 202(a). The Commission found that the absence of any qualifying language in Section 251 meant that Congress intended a "more stringent standard." *Id.* This point is developed more fully in the Petition for Partial Reconsideration filed by the New Jersey Payphone Association. In the interest of not burdening the Commission with repetitive pleadings, that discussion is incorporated herein by reference.

²² While the Commission did not order this unbundling in the portion of the Order directly addressing "non-structural safeguards," it does not matter whether the Commission treats the requests for unbundling herein as part of the non-structural safeguards, as part of its implementation of Section 276(b)(1)(B), or under its general Communications Act mandate.

²³ Requiring the LECs to provide any central office functionality offered to their own inmate divisions to independent ISPs has the collateral benefit of providing the Commission with a measure of what the LEC inmate division has to take as an imputed cost for the same services.

nondiscrimination standard of Section 276(A) or the Computer III comparably efficient interconnection standards of Section 276(b)(1)(C). In the case of the BOCs, such discrimination is plainly prohibited by the express terms of Section 276, which, as discussed above, prohibits any discrimination in favor of the BOCs' own inmate services. 47 U.S.C. § 276(a)(2). Similarly, Computer III applies directly to the BOCs. 47 U.S.C. § 276(b)(1)(C). And the Commission has made these standards applicable to the non-Bell LECs under Section 202 of the Act and Computer III principles.²⁴

The Commission must also clarify that to the extent that the LECs are providing services to support inmate functionality through non-switch-based equipment including peripherals and adjuncts, not only must this equipment be removed from regulation;²⁵ the LECs must also provide collocation and give comparable interconnection to independent ISPs.²⁶

B. The Commission Must Address the Three Areas Where the Coalition Demonstrated That Additional Protections Are Necessary

In addition to clarifying that all of the nonstructural safeguards applicable to BOC payphones also apply to BOC inmate operations, the Commission must also recognize that inmate calling is a unique service and that the Commission can and should

²⁴ The points discussed in this paragraph are more fully addressed in the Petition for Partial Reconsideration and Clarification being filed by the New Jersey Payphone Association. The Coalition fully supports and hereby incorporates by reference the discussion contained therein.

²⁵ See Coalition comments at 18-19 (attached as Exhibit 6).

²⁶ Id. at 29-30.

put into place additional safeguards to end the BOC's anticompetitive discrimination against independent ISPs. In its comments, the Coalition specifically asked the Commission to address three critical areas that require the Commission's immediate attention: (1) BOC provision of account and fraud control information to independent ISPs; (2) the nondiscriminatory handling of billing and collection by the BOCs, including BOC treatment of bad debt; and (3) the terms under which both BOC inmate divisions and independent ISPs will purchase basic service offerings from the BOCs' regulated divisions. See Coalition Comments at 23-30 (attached as Exhibit 6). Rather than repeat that showing here, the Coalition instead incorporates that discussion herein by reference. The Commission, however, failed to address explicitly these specific issues raised by the Coalition. In order to comply with its obligations under Section 276, the Commission must address each of the issues, in accordance with the discussion in Section III(A) above.

**IV. THE COMMISSION MUST ENSURE THAT
LEC INMATE CALLING ASSETS ARE
TRANSFERRED OUT OF REGULATION AT
MARKET, NOT BOOK, VALUE**

The Coalition agrees with the arguments made by the APCC in its contemporaneously filed Petition for Partial Reconsideration and Clarification with regard to the transfer of LEC assets out of regulated accounts. In the interest of not presenting the Commission with unnecessarily repetitive pleadings, the Coalition hereby adopts the arguments of APCC and incorporates them herein. Suffice to say that all the arguments

that apply to payphones, e.g., the value of contracts and intangibles, etc. are equally applicable here.

V. CONCLUSION

For the reasons shown above, the Coalition respectfully requests that the Commission clarify and reconsider the Order to the extent requested herein.

Dated: October 21, 1996

Respectfully submitted,

By 

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for Inmate Calling Services
Providers Coalition

